

**A**

**Vandeloop Reply Affidavit – Attachment A**



## Accessible

Date: **November 1, 2002**

Number: **CLECC02-302**

Effective Date: **See Text**

Category: **UNE**

Subject: **(RATE CHANGE) Interim DS3 UNE Loop Recurring Rate Offering**

Related Letters: **NA**

Attachment: **Yes**

States Impacted: **California**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

This Accessible Letter provides notice that SBC Pacific Bell Telephone Company ("Pacific") has developed an optional amendment ("Amendment") for CLECs in California to replace the interim DS3 UNE Loop recurring rate as described in Accessible Letter **CLECC02-267** with a lower interim DS3 UNE Loop recurring rate.

This Amendment makes available an interim DS3 UNE loop recurring rate of \$573.20. This interim DS3 UNE loop recurring rate of \$573.20 will become effective on the date the CLEC's Amendment is deemed approved by the California Public Utilities Commission ("CPUC"). Under the CPUC's normal process for approving interconnection agreement amendments, the Amendment will become effective as to any CLEC in California, absent rejection of the advice letter by the CPUC, thirty (30) days after the filing date of the Advice Letter to which the Amendment is appended.

The Amendment will remain in effect between Pacific and any CLEC who elects to incorporate such Amendment into its Agreement until the earlier of: (1) the date the CPUC approves a final DS3 UNE Loop recurring rate in Application 01-02-024/A.01-02-035, the CPUC's Unbundled Network Element (UNE) Reexamination for Pacific Bell Telephone Company, subject to any appeals and associated review. The interim DS3 UNE loop recurring rate set forth in this Amendment would automatically be replaced by the DS3 UNE loop recurring rate established by the CPUC in such proceeding; or (2) the effective date of any regulatory or judicial action, finding and/or order, including but not limited to a finding by the FCC in its pending Notice of Proposed Rulemaking, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, FCC 01-361 (rel. Dec. 20, 2001) ("Triennial Review UNE Rulemaking") that Loops or DS3 Loops are no longer a UNE.

CLECs in California who wish to execute the Amendment should contact their Account Manager, or may print the attached Form ("amendment notification.doc") and FAX a signed request to SBC's CONTRACT ADMINISTRATION group at 1-800-404-4548. Please note that a CLEC must have (or obtain in association with this Amendment), DS3 UNE loop rates, terms and conditions in its Agreement with Pacific to use in conjunction with this Amendment.



"CA Amendment  
Notification.doc"

Pacific reserves the right to make any modifications to the information set forth herein and/or to cancel the information set forth herein. In the event of any modifications to or cancellation of the information set forth herein, CLECs will be notified via a subsequent Accessible Letter. Pacific shall incur no liability to any CLEC if the information set forth herein is modified or cancelled by Pacific.

**\*INTERIM RATE DS3 LOOP AMENDMENT\***  
**\*ORDER NOTIFICATION\***

To: SBC PACIFIC BELL TELEPHONE COMPANY  
Contract Administration  
Four SBC Plaza, 9<sup>th</sup> Floor  
Dallas, TX 75202  
1-800-404-4548

FROM: \_\_\_\_\_

(CLEC Name)

FAX NUMBER: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

Email Address: \_\_\_\_\_

**AGREEMENT PREPARATION INFORMATION:**

CLEC LEGAL NAME

MAILING ADDRESS - STREET

CITY/STATE/ZIP CODE

TELEPHONE NUMBER

STATE OF INCORPORATION (IF APPLICABLE)

OCNJAE CN

OFFICIAL NOTICE TITLE & NAME

TELEPHONE NUMBER

OFFICIAL NOTICE ADDRESS (**CANNOT BE P.O. BOX**)

OFFICIAL NOTICE CITY/STATE/ZIP

PLEASE LIST THE TYPE OF AGREEMENT AND  
ENTITY NAME THAT THIS REQUEST WILL AMEND.  
EX: "INTERCONNECTION-ABC COMPANY"

Please note that you should expect to receive the amendment within 10 business days from date  
of this facsimile.





Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. **20554**

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Pacific Bell Telephone Company, <b>and</b>	)	WC Docket No. 02-306
Southwestern Bell Communications Services,	)	
Inc. for Provision of In-Region, InterLATA	)	
Services in California	)	

REPLY AFFIDAVIT OF CYNTHIA WALES

REGARDING  
PACIFIC'S ROLE AS PREFERRED CARRIER ADMINSTRATOR

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I, CYNTHIA WALES, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

1. I **am** the Executive Director in the Regulatory organization of SBC Pacific Bell (“Pacific”). My business address is 140 New Montgomery, Room 1728 in San Francisco, CA 94104.

**PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND**

2. I studied Business Administration at National University until 1991. In 1995, I received a **Juris** Doctor from San Joaquin College of Law. I have over 17 years **of** experience with Pacific, during which I have held positions in the Consumer Marketing and Regulatory organizations. I joined the Regulatory organization in August 1998 as an Associate Director with regulatory responsibilities for numbering issues. In March 2000, I was promoted to the position of Director and my expanded responsibilities included service quality and 271 support for California. In July 2001, I was promoted to my current position where I manage a team of Regulatory Managers and have the overall responsibility for a broad range of regulatory and legislative matters.

**EXECUTIVE SUMMARY**

3. The purpose of my affidavit is to reply to the comments **of** Vycera Communications, Inc., f/k/a Genesis Communications, Inc (“Vycera”), regarding Pacific’s role in processing requests to establish or change a subscriber’s preferred carrier (“PC Administrator”) on a neutral basis, as well as the PC Administrator-related allegations in the Comments of



AT&T Corp. and Comments of PacWest Telecomm, Inc, RCN Telecom Services, Inc., and U.S. Telepacific Corp.’

**OVERVIEW OF PACIFIC’S ROLE AS PC CHANGE ADMINISTRATOR**

4. Pacific has been the PC Administrator in its California service areas for InterLATA service since 1985, and for IntraLATA service since 1999. Over the years, Pacific has implemented process and system improvements to efficiently accept and process preferred carrier change requests. Pacific receives requests for carrier changes in two ways: (a) a customer may contact Pacific and request a change, or (b) a carrier may initiate a request to Pacific on behalf of the customer. Pacific’s practices and procedures for handling carrier-initiated requests conform with the guidelines and standards established by the industry Ordering and Billing Forum (“OBF”).
5. Using a standard data exchange format, Pacific provides status to both the customer’s new and old carriers throughout the PC change process. Upon receipt of a carrier-initiated PC change request, Pacific either accepts or rejects the request. A rejection typically occurs when the requesting carrier has not included information necessary to complete the request, such as a valid telephone number, or if the customer has placed a “PC freeze” on his or her account, which prevents any changes being made without the customer’s express authorization. Once Pacific has accepted a customer or carrier-initiated PC change request, Pacific creates a service order so that the customer’s IntraLATA service provider, InterLATA service provider, or both is changed. The process calls for Pacific to process the service order in its network within **24** hours.

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<sup>1</sup> See Vycera’s Comments at 30-37; AT&T Comments at 79-81; PacWest Comments at 17-18

Pacific's wholesale organization provides Pacific's retail organization the same information regarding PC changes as is provided to other carriers.

6. Pacific has implemented extensive measures since 1985 to maintain the integrity and accuracy of its systems and procedures for processing PC change requests. The Pacific personnel and systems that accept and process carrier-initiated PC change requests reside within Pacific's wholesale organization. Pacific's PC change center in California has been, and continues to be, a restricted and highly-secure work environment with limited access. Pacific's PC change center does not share this information with other Pacific organizations, and does not share it externally except in response to Federal Communications Commission ("the Commission") or California Public Utilities Commission ("CPUC") requests, or in response to other legal requests (such as a court subpoena). Pacific's responses to such external requests are coordinated by Pacific's regulatory organization. Pacific has provided the CPUC with data relative to the number of PC changes and disputes on a monthly basis since 1996, using an existing report that was originally developed in 1993 to enable the Commission to evaluate the effectiveness of the Subscription Management Charges in reducing the number of PC disputes.

#### **RESPONSE TO WCERA'S ALLEGATIONS**

7. Vycera *makes* several underlying allegations in support of its general claim that Pacific has engaged in "anticompetitive win-back practices and related abuse of its position as IntraLATA PC Administrator." All of these allegations are unfounded. All involve "slamming," which occurs when a carrier submits a request to change a subscriber's

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<sup>2</sup> Vycera Comments at 30.

Local, IntraLATA, or InterLATA service provider without the subscriber's knowledge or explicit authorization. A subscriber who has been a victim of slamming may first learn that his or her service was changed upon receipt of the subscriber's next telephone bill, when placing a calling card call and being told that the card is invalid, or through a marketing attempt from the subscriber's former preferred carrier to convince the subscriber to return to that carrier's service.<sup>3</sup>

8. When a subscriber contacts Pacific to report that his or her service was changed without the subscriber's knowledge or consent, Pacific will return the subscriber at no charge to the subscriber's preferred carrier. If the return is to Pacific's IntraLATA service, the return is confirmed through an independent third party verifier, or through a Written letter of authorization for some subscribers, consistent with the federal and state verification rules. Additionally, if the subscriber states that there has been **an** unauthorized change in service, Pacific representatives place a code on the change order indicating a preferred carrier dispute, and Pacific notifies the carrier alleged by the subscriber to have submitted the unauthorized change request of the dispute, in standard data exchange format.
9. Vycera attempts to support its claim that Pacific **has** abused its status as PC administrator by pointing to the high percentage of IntraLATA slamming disputes that have been registered against Vycera in Pacific's California service areas. Vycera notes, for example, a sharp rise in reported slams involving Vycera (25%) that occurred upon its entry into the California IntraLATA market in May 1999. Vycera claims that this rise

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<sup>3</sup> The practice of a carrier, that has lost customer to a competitor, to convince the customer to return to the carrier is referred to in the industry as "winback."

was attributable to Pacific Bell's winback practices, which, according to Vycera, "make clear" that Pacific does not operate as a neutral IntraLATA PC administrator!

10. Vycera offers nothing to support its argument that Pacific's role as PC Administrator has anything whatsoever to do with its high slamming percentage. \*\*\*

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11. \*\*\*

\*\*\* During

that time, representatives from Pacific Bell's legal **and** regulatory organization worked in

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<sup>4</sup> Vycera Comments at 31

<sup>5</sup> The PC and LPC change **and** dispute data **is** obtained from the monthly Subscription Activity Report, which has been provided to the CPUC at their request, since 1996.

a cooperative manner with Mr. Gietzen and others within his company in an attempt to reduce the growing number of customer complaints against Vycera.

12. Thus, while Vycera attempts to blame Pacific for the high percentage of slamming claims against Vycera, it is Vycera's own performance, **as** evidenced by a recurring pattern of slamming complaints against it when it enters a new market, that appears to be the problem – not any failure by Pacific to properly perform its role as PC Administrator.
13. Vycera also attempts to support its claim by referring to **one** example **from** over three years ago. The Affidavit of Derek M. Gietzen, which is attached to Vycera's comments, contains a copy of a "winback" letter that Pacific sent Mr. Gietzen following his change from Pacific's IntraLATA service to Vycera's (then Genesis's) IntraLATA service. **Mr.** Gietzen indicated he desired to switch back to Pacific by completing the business reply card attached to the winback letter. Upon receiving the business **reply** card, Pacific inadvertently registered Mr. Gietzen's PC change request as a "PC dispute." This error resulted from a manual coding error that affected the processing of a small portion of Pacific's winback reply cards during the June through August 1999 time frame. As a result of the error, some winback reply cards were processed **so** as not just to return the customer to Pacific **as** the customer's preferred IntraLATA carrier (which was proper since that is what the customer indicated), but also to register a "PC dispute." Upon discovering the error, Pacific notified all carriers affected by this mistake, and provided them credits for any incorrect PC dispute charges assessed. In Vycera's case, only 17 of its customer accounts were affected and, of those 17, only **8** had PC dispute charges billed

to Vycera before Pacific corrected the problem.<sup>6</sup> Pacific promptly provided Vycera with a credit of \$79.84 for the 8 PC dispute charges incorrectly billed.

14. Pacific also apprised the CPUC of this problem and implemented appropriate steps to minimize the likelihood of its recurrence, including retraining of personnel involved. Since that time, Pacific has implemented system and process improvements for recording and tracking slamming complaints, including customer education and awareness of their different telecommunications choices.
15. Vycera further attempts to support its allegation that Pacific has engaged in “anticompetitive win-back practices and related abuse of its position as IntraLATA toll PC Administrator” by implying that “Pacific’s winback practices are *creating* the alleged unauthorized IntraLATA toll carrier changes.” That is simply not true. Many subscribers respond to Pacific’s winback letters by calling our offices to report that they want to return to Pacific’s service. These are not coded as disputes unless the subscriber states that he or she did not request to change his or her service from Pacific.
16. To further improve our processes, Pacific implemented a mechanized third party verification process in April 2002 that reconciles all service orders changing local toll service to Pacific for residential customers where a PC dispute is recorded. During the third party verification process, the subscriber is asked whether the previous change was indeed unauthorized. If the customer does not confirm that an alleged unauthorized

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<sup>6</sup> Pacific explained these fact’s to Mr. Gietzen’s legal counsel in September 1999

<sup>7</sup> Vycera Comments at 33-34; see also AT&T Comments at 80. See also Comments of PacWest Telecomm, Inc, RCN Telecom Services, Inc., and U.S. Telepacific Corp. at 10.

change had occurred, then the change is not tracked as a dispute, and the outgoing carrier is not charged for a dispute.

17. Vycera also complains about a Pacific tariff provision which provides that, when a subscriber notifies Pacific that he or she has been slammed, Pacific (a) returns the subscriber to his or her carrier of choice at no charge; (b) provides the subscriber with a credit for any previous change charges; and (c) assesses a charge to the carrier equal to two times the PC change charge;' without first providing the alleged slamming carrier the opportunity to dispute the slamming allegation.' Pacific's procedures, however, are fully consistent with the Commission's revised slamming liability rules," and therefore Vycera's complaints regarding this procedure have no merit.
18. Finally, Vycera argues for the use of an independent third party administrator to administer PC changes and to resolve PC disputes." Pacific opposes that proposal because it would unnecessarily add another layer in processing carrier change requests and prevent the immediate resolution of disputes. An independent administrator **lacks** access to carrier billing records and ordering systems. In any event, in its First Order on

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<sup>8</sup> Vycera Comments at 32, n.100

<sup>9</sup> Prior to November 28,2000, the effective date of the Commission's revised slamming liability rules, Pacific had a tariffed Subscription Management charge (TARIFF F.C.C. No. 1, Section 13.3.3) applicable to each PIC/LPIC dispute with two options: Authorization, where a charge of \$20.05 was assessed for each unsubstantiated switch or Switchback, where a charge of \$9.98 was assessed for each dispute. Under the authorization option a carrier submitted a copy of the customer authorization to avoid the charge. Under the Commission's revised slamming liability rules, however, either the Commission or the applicable state commission determines whether authorization was obtained by the carrier, not the executing carrier. *See* 47 C.F.R. 64.1110-80. Therefore, these options were deleted from Pacific's tariff effective November 28,2000.

<sup>10</sup> 47 C.F.R. § 64.1110-80

<sup>11</sup> Vycera Comments at 31; *see also* AT&T Comments at 81.

Reconsideration,” the Commission considered the proposal to establish a third party administrator and rejected it. The Commission instead agreed with the state commissions which, through the National Association of Regulatory Utility Commissioners (“NARUC”), had opposed the idea of an independent third party administrator and instead favored state commissions as the primary administrators of slamming liability issues.<sup>13</sup> The Commission concluded: “We agree with the arguments of NARUC that state commissions will be perceived by consumers as more ‘neutral’ adjudicators of disputes than the third party administrator proposed by the interexchange carriers.”<sup>14</sup>

**ONSI TO AT&T'S CLAIMS CONCERNING THE IMPLICATIONS OF A CPUC INVESTIGATION REGARDING AT&T LRIC DISPUTES IN 1999**

19. AT in its comments, argues that an investigation by the CPUC's Director of Consumer Protection and Safety Division (“CPSD”) supports the conclusion that the public interest would not be served by approval of SBC's 2000 tariff.<sup>15</sup> The CPSE report to which AT&T refers, and the CPSD's report regarding that investigation, had its genesis in a dispute between AT&T and Pacific Telephone Company Primary Liability Carrier (“PTC”) slamming practices proposed by Pacific in 1999 involving AT&T. The parties filed a lawsuit against each other with the UC over

<sup>12</sup> Corrected Version First Order on Reconsideration, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, FCC 00-135 (May 3, 2000).

<sup>13</sup> *Id.* at ¶ 24.

<sup>14</sup> *Id.* at ¶ 26.

<sup>15</sup> AT&T Comments at 79-81



this matter in December 1999 and February 2000.<sup>16</sup> Although AT&T and Pacific settled their dispute, in February 2001 the CPUC ordered the CPSD to conduct an independent investigation of the matter.” Specifically, the CPUC ordered the CPSD to “review those record, conduct a follow-up investigation, and file a report on its results within 180 days of receiving the records.”<sup>18</sup> The CPUC recently issued a final opinion and order, dated October 3, 2002, that describes the results of the CPSD’s investigation and the further action to be taken. A copy of that opinion is attached hereto as Attachment A.

20. As the CPUC’s October 3, 2002 opinion demonstrates, AT&T’s various claims regarding the “public interest” implications of the CPSD’s investigation and report are without merit. First, AT&T’s makes no mention in its comments of the nature of the CPSD’s investigation, or what the CPSD’s investigation actually found. In its October 3, 2002 opinion, the CPUC describes the CPSD’s investigation and findings as follows: “[The] CPSD randomly selected 128 California consumers to be interviewed from a list of customers whom Pacific identified as having been switched to AT&T without their authorization in 1999. Of those 128 consumers, CPSD completed 75 interviews... Of the 75 random interviews, CPSD found that 25 customers had been switched to AT&T without their authorization, 11 had authorized the switch of their local toll service to AT&T, and 39 either couldn’t recall switching their **service** provider or said that no switch had occurred.””

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<sup>16</sup> Opinion on Slamming Complaints, *AT&T Comm. & Calif v. Pacific Bell Telephone Co.*, Case No. 99-12-029, D.02-10-006 (Oct. 3, 2002) (hereinafter “October 3, 2002 Opinion”).

<sup>17</sup> Id. at 2-3.

<sup>18</sup> Id. at 3 (citing CPUC Decision D.01-02-017 (dated Feb. 8, 2001)).

<sup>19</sup> Id. at 4-5.

21. Thus, the nature of the investigation conducted by the CPCD – customer interviews conducted some two or more years after the alleged events took place – has to call into question the reliability of the investigation’s conclusions?’ In any event, AT&T conveniently fails to mention that the report’s findings were that only *11* interviewees actually said they had **not** been slammed by AT&T, while *25* confirmed that they **had** been slammed by AT&T.
22. Second, the matter has nothing to do with Pacific’s “winback program.” Rather, it concerns Pacific’s processes for “tracking and billing LPIC disputes.”<sup>21</sup>
23. Finally, and most importantly, the CPSD investigation is not relevant to any current § 271 issue because the period examined ~~was~~ 1999, shortly after IntraLATA presubscription was implemented in California. No conclusions about Pacific’s **current** processes for handling and reporting PC changes can be drawn from the investigation because, as I explain in paragraph 16 above, Pacific’s processes and systems have gone through substantial improvements since 1999. The CPUC made precisely this point in its October 3, 2002 opinion, wherein it rejected the contention that further examination of Pacific’s processes in 1999 for administering LPIC disputes is warranted: “We find no benefit in keeping this proceeding open pending the results of an independent audit and verification of the 1999 process, as requested by the CPSD. That process, which has

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<sup>20</sup> The customer sampling was not statistically valid; furthermore, more than half of the customers interviewed – 39 – could not recall anything.

<sup>21</sup> See October 3, 2002 opinion at 5 (“[N]either [AT&T nor Pacific] believes that . . . an investigation [of slamming and marketing practices] should be included in this complaint proceeding. AT&T recommends that we instead open an investigation into Pacific’s process for tracking and billing LPIC disputes.”).

already been scrutinized by the CPSD, has and is currently undergoing further changes.”<sup>22</sup>

The CPUC has ordered an independent “operational audit and validation of Pacific’s *current* process for tracking and billing” LPIC disputes. This audit will require Pacific to correct any deficiencies that might be discovered by the independent auditor.”<sup>23</sup>

## **CONCLUSION**

24. Pursuant to Part II. E. of the Consent Decree entered into between SBC Communications Inc. and the Federal Communications Commission, released on May 28, 2002, see Order, In the Matter of SBC Communications, Inc., 17 FCC Rcd 10780(2002), I hereby affirm that I have (1) received the training SBC is obligated to provide to all SBC FCC Representatives; (2) reviewed and understand the SBC Compliance Guidelines; (3) signed **an** acknowledgment of my training and review and understanding of the Guidelines; and (4) complied with the requirements of the SBC Compliance Guidelines.”
25. This concludes my affidavit.

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<sup>22</sup> October 3, 2002 Decision at 5-6.

<sup>23</sup> *Id.* at 10, Ordering ¶ 1.

STATE OF CALIFORNIA            )  
  )  
COUNTY OF CONTRA COSTA    )

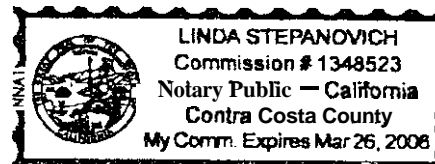
I declare under penalty of perjury that the foregoing is true and correct

Executed on Oct 31, 2002

Cynthia Wales  
CYNTHIA WALES

Subscribed and sworn to before me this 31 day of October, 2002

Linda Stepanovich  
Notary Public



**A**

**Wales Reply Affidavit – Attachment A**

Decision 02-10-006 October 3,2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

AT&T Communications of California, Inc.

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant.

Case 99-12-029  
(Filed December 21,1999)

Pacific Bell Telephone Company,

Complainant,

vs.

AT&T Communications of California, Inc.,

Defendant.

Case 00-02-027  
(Filed February 6,2000)

**OPINION ON SLAMMING COMPLAINTS**

## **I. Summary**

Pacific Bell (Pacific) shall retain the services of an independent auditor to conduct an "operational audit"<sup>1</sup> and validation<sup>2</sup> of its current process for tracking and billing Local Primary Interexchange Carrier (LPIC) disputes.

## **II. Background**

AT&T Communications of California, Inc. (AT&T) has alleged that Pacific slammed<sup>3</sup> thousands of California customers who had presubscribed AT&T or another carrier as their LPIC for intraLATA<sup>4</sup> toll service, and that Pacific engaged in unfair business and billing practices to win back customers who had switched their LPIC from Pacific to AT&T.

Pacific, in turn, alleged that AT&T engaged in slamming activities. Pacific based its complaint on numerous verbal and written communications from customers advising Pacific that their intraLATA toll service had been switched to AT&T without the customers' knowledge or informed consent.

These slamming allegations arose out of billing disputes. Neither of the complainants alleged that any customer ever paid a higher rate than the customer otherwise would have paid as a result of an alleged slam.

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<sup>1</sup> As used here, "operational audit" is an evaluation of the effectiveness and efficiency of an entity's compliance with regulatory policies, plans, procedures, laws, and regulations.

<sup>2</sup> Validation encompasses a statistical sampling of direct confirmation with LPIC customers.

<sup>3</sup> Slamming is a practice in which a consumer's local, local toll or long-distance service provider is switched without the consumer's authorization.

<sup>4</sup> IntraLATA is telecommunications services that originate and end in the same Local Access and Transport Area.



On April 13,2000, the original assigned Administrative Law Judge (ALJ) consolidated these complaints. Subsequently, on August 7,2000, AT&T and Pacific filed requests to dismiss, without prejudice, their respective complaints. Those requests resulted from negotiations and discovery showing that some of their allegations were unwarranted and that other problems could be resolved or avoided by prospectively changing their marketing efforts to reduce customer confusion over LPIC switching. These changes are embodied in a set of “Statement of intraLATA Toll Marketing Principles” negotiated by AT&T and Pacific, and in tariff language clarifications.

By Decision (D.)01-02-017, dated February 8,2001, we declined to dismiss the complaints. We found the public interest may be better served by resolving the serious slamming allegations in these complaints. We instead required AT&T and Pacific to retain for three years (from September 6,2000) all records pertaining to the allegations contained in their complaints, and to provide those records to the Director of Consumer Protection and Safety Division (CPSD).<sup>5</sup>

We further directed CPSD to review those records, conduct a follow-up investigation, and file a report on its results within 180 days of receiving the records. That report was to address the issues identified in the Assigned Commissioner’s Scoping Memo and to recommend whether the complaints should be dismissed. The issues included whether either AT&T or Pacific has slammed California consumers, and whether Pacific’s LPIC billing system improperly billed AT&T for unauthorized changes in service provided under

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<sup>5</sup> At the time D.01-02-017 was issued, CPSD was known as the Consumer Services Division.

Pacific's winback program, when in fact the consumer authorized the change. CPSD filed its report on August 7, 2001.<sup>6</sup>

#### **11. Discussion**

Although AT&T and Pacific resolved all issues between themselves, we look to the CPSD report to determine what impact, if any, the practices alleged in the complaints had or may have on California consumers.

CPSD randomly selected 128 California consumers to be interviewed from a list of customers whom Pacific identified as having been switched to AT&T without their authorization in 1999.<sup>7</sup> Of those 128 consumers, CPSD completed 75 interviews. From those completed interviews, CPSD found discrepancies in Pacific's reporting of alleged slamming complaints. Because of those discrepancies, CPSD recommends that this proceeding remain open and that an outside (independent) auditor conduct a detailed study of the accuracy of Pacific's process for tracking and billing LMC disputes, currently and for 1999-2000. CPSD also found discrepancies in Pacific and AT&T's compliance with the independent third-party verification (TPV) requirement of Pub. Util. Code § 2889.5.

##### **A. Alleged Slamming**

Of the 75 random interviews, CPSD found that 25 customers had been switched to AT&T without their authorization, 11 had authorized the switch of

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<sup>6</sup> Parts of that report containing confidential information provided by AT&T and Pacific were submitted under seal. Such information is available upon the execution of a non-disclosure agreement.

<sup>7</sup> The total number of customers on that list was not indicated

their local toll service to AT&T, and 39 either couldn't recall switching their service provider or said that no switch had occurred. Those results led CPSD to conclude that AT&T had slammed some customers, Pacific had improperly billed AT&T for customers that switched to AT&T and then retuned to Pacific under Pacific's winback program, and that Pacific's coding of complaints in its billing system may be inaccurate.

AT&T and Pacific welcome further investigation into slamming and marketing practices within California. However, neither believes that such an investigation should be included in this complaint proceeding. AT&T recommends that we instead open an investigation into Pacific's process for tracking and billing LPIC disputes. AT&T also suggests we consider whether Pacific should be managing this process at all. Pacific does not believe that an audit would yield useful or reliable information because Pacific has changed and is in the process of further changing its procedures for tracking and billing LPIC disputes. If any such investigation is instituted, Pacific recommends that the practices of all market participants be included in the investigation.

We find from CPSD's report that Pacific's process of tracking and billing 1999 LPIC disputes, at a minimum, contributed to customer confusion. We further find that the public interest requires an independent audit and validation of Pacific's current process. Public interest, in this instance, is confirmation that (1) the switching of customers' LPIC service is done "only" upon specific request of customers, and (2) the confidential LPIC dispute reports being provided by Pacific to CPSD provide accurate information.

We find no benefit in keeping this proceeding open pending the results of an independent audit and verification of the 1999 process, as requested by CPSD. That process, which has already been scrutinized by CPSD, has and is currently

undergoing further changes. Rather, an audit should be conducted on the process currently being used by Pacific and relied on by CPSD. We also decline, for now, to open an investigation into Pacific's process; we may reconsider, however, if the audit results identify issues needing to be addressed in an investigation.

Pacific should retain the services of an independent auditor to audit its current process for tracking and billing LPIC disputes. That auditor should prepare and submit to CPSD a report on the scope and results of the audit. Pacific should make the auditor and all of the auditor's work papers available to CPSD upon request. Pacific should correct any deficiencies discovered by the independent auditor and report any corrective action taken to CPSD.

To the extent that CPSD is not satisfied with the audit results or corrective action taken by Pacific, CPSD should prepare an investigation into the tracking and billing of Pacific's LPIC disputes for our consideration.

In sum, as the complainants have resolved their differences, and as CPSD has not found that AT&T or Pacific intentionally slammed any customer, this proceeding should be closed. However, CPSD did find that Pacific's process in 1999 for tracking and billing LPIC disputes was flawed, so the closing of this proceeding should be conditioned upon an independent audit of Pacific's current process to determine whether Pacific has corrected those flaws.

#### **B. Third-party Verification**

CPSD found that AT&T and Pacific did not "at all times" comply with the independent TPV requirements set forth in Pub. Util. Code § 2889.5(a)(3). That section requires, among other matters, an independent TPV company to confirm a customer's decision to change his or her telephone service provider. Although CPSD did not address the extent or frequency of AT&T and Pacific's

noncompliance with TPV requirements in the public version of its report, more detailed information was included in its sealed version. To the extent that such information is germane to the issues in this order and, if revealed, would not place the utilities at a competitive disadvantage, disclose disaggregated customer information, or disclose specific customer information, such information should be discussed in this order.

The sealed version of CPSDs report disclosed that Pacific used signed letters of authorization in lieu of TPVs for the period May 1999 through October 1999, approximately 180 days, for confirming residential subscribers' decisions to change their local toll telephone service to Pacific. The sealed version also disclosed that Pacific did not always use TPVs when returning residential customers back to Pacific's service as part of its winback program.

Pacific filed an August 28, 2001 response to the report and an October 25, 2001 reply to AT&T's response, but Pacific limited its comments to the proposed audit of its LPIC billing and tracking system. Thus, Pacific did not deny report's finding of noncompliance with the statutory TPV requirements. Pacific's September 6, 2000 statement at the second prehearing conference on this matter clearly concedes such noncompliance. At that time, its attorney stated that "very soon we'll implement a third party verification of slamming allegations so that whatever those numbers are, there is not going to be a dispute" because they will have been verified.<sup>8</sup>

As to AT&T, CPSD did not indicate the extent of noncompliance. Unlike Pacific, AT&T addressed this finding in its response to the CPSD report. AT&T

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<sup>8</sup> RT 49, line 5 to 11.

said that it did provide CPSD with the TPV confirmation date, name of person who performed the confirmation, the service confirmed, and the unique identifier provided by the customer (often a birth date) "for all but a very few of the residential accounts."<sup>9</sup> This comports with CPSD's finding that AT&T did not "at all times" comply with the TPV requirement of Pub. Util. Code §2889.5.

Although it is reasonable to expect minor noncompliance with TPV, full compliance in 1999 could have properly corrected and conceivably avoided customer confusion and the slamming of the 25 customers CPSD determined were slammed. This lack of compliance with TPV further justifies the need for an audit of Pacific's process.

#### **IV. Comments on Draft Decision**

The draft decision of ALJ Galvin in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure.

AT&T and WorldCom, Inc. filed comments and Greenlining Institute submitted a letter on the ALJ's draft decision. Pacific Bell filed comments and reply comments. AT&T, Pacific Bell, and Greenlining Institute are parties to the proceeding, as such their comments were carefully considered. Because WorldCom, Inc. is not a party to this proceeding, its comments were not considered. Only minor changes were made to the draft decision. Those changes were made to Finding of Fact Numbers 7 and 8 and are incorporated into this order.

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<sup>9</sup> AT&T's response, page 10, footnote 4.

#### **IV. Assignment of Proceeding**

Michael Peevey is the Assigned Commissioner and Michael Galvin is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. The complaints of AT&T and Pacific were consolidated on April 13, 2000.
2. AT&T and Pacific resolved differences between themselves and requested their complaints be dismissed without prejudice. However, we declined to do so based on our concern that the public interest may be implicated by those complaints.
3. CPSD recommends that Pacific retain an outside auditor to provide a detailed report on the accuracy of Pacific's process for tracking and billing LPIC disputes, currently and for 1999-2000.
4. CPSD confirmed from a random sample of LPIC dispute customers identified by Pacific that some of the customers had been slammed in 1999.
5. CPSD found Pacific's process of tracking and billing LPIC disputes flawed.
6. The slamming allegations in this proceeding arose out of billing disputes. Neither of the complainants alleged that any customer ever paid a higher rate than the customer otherwise would have paid as a result of an alleged slam.
7. AT&T and Pacific did not at all times comply with the independent TPV requirements in 1999.
8. From May 1999 through October 1999, Pacific did not use TPV to confirm a residential subscriber's decision to change his or her local toll service when Pacific had a signed letter of authorization from that residential subscriber authorizing such change.
9. AT&T provided TPV on all but a very few of its residential accounts.

### **Conclusions of Law**

1. The CPSD report should remain under seal to the extent that such information, if released, would place the utilities at a competitive disadvantage, disclose disaggregated information, or disclose specific customer information.
2. Pacific's process of tracking and billing 1999LPIC disputes was flawed and contributed to customer confusion.
3. Public interest requires confirmation that the switching of customers' LPIC service is done only upon specific request of customers and confirmation that confidential LPIC dispute reports being provided by Pacific to CPSD provide accurate information.
4. Public interest requires an independent audit and verification of Pacific's current process of tracking and billing LPIC disputes.
5. To the extent that information placed under seal is germane to the issues before us and, if revealed, would not place the utilities at a competitive disadvantage, disclose disaggregated customer information or disclose specific customer information, such information should be discussed in this order.
6. It is premature to issue an investigation into Pacific's LPIC process.
7. This proceeding should be closed conditioned upon an independent audit of Pacific's current process for tracking and billing LPIC disputes.

### **O R D E R**

#### **IT IS ORDERED** that:

1. Pacific Bell (Pacific) shall retain an independent auditor to conduct an operational audit and validation of Pacific's current process for tracking and billing Local Primary Interexchange Carrier (LPIC) disputes. That independent auditor shall, without Pacific oversight, prepare and submit a report on the scope and results



of the audit to the Commission's Consumer Protection and Safety Division (CPSD) within 120 days after the effective date of this order. The independent auditor and all of the auditor's work papers shall be available to CPSD. Pacific shall correct any deficiencies discovered by the independent auditor within 30 days after completion of the audit report, and shall report any corrective action taken to CPSD within 15 days after correction.

2. To the extent that CPSD is not satisfied with the audit results or corrective action required by Ordering Paragraph 1, CPSD will prepare an order instituting investigation into the tracking and billing of Pacific's LPIC disputes for our consideration.

3. All data placed under seal in this proceeding shall remain sealed. The sealed data shall not be made accessible or disclosed to anyone other than Commission staff. However, the sealed data may be disclosed upon the execution of a mutually acceptable nondisclosure agreement or on further order or ruling of the Commission or the Administrative Law Judge then designated as the Law and Motion Judge.

4. Cases 99-12-029 and 00-02-027 are closed. Any failure of Pacific in complying with Ordering Paragraph 1 shall result in the reopening of this proceeding and setting of hearings upon the filing of a petition by CPSD.

This order is effective today.

Dated October 3, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

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